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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

PR Docket No. 92-235

REPLACEMENT OF PART 90 BY PART 88 TO
REVISE THE PRIVATE LAND MOBILE RADIO
SERVICES AND MODIFY POLICIES
GOVERNING THEM

COMMENTS OF PACTEL PAGING

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TABLE OF CONTENTS

Summary	ii
I. PacTel Supports Granting Recovered Channels for Innovative New Services	2
A. PacTel Favors Regional Licenses	3
B. PacTel Favors Exclusive Frequency Grants	4
C. Regions Should Reflect Mobile Service Areas.	5
D. New Channels Should be Granted on Contiguous Frequencies	6
E. PacTel Supports Open Entry	7
F. Additional Spectrum Efficiency Requirements Are Not Necessary	9
II. PacTel Supports Additional Anti-Speculation Devices	10
A. Construction Requirements	11
B. Financial Showings	13
C. Technical Showings	14
D. Filing Fees	15
E. Bonds to Insure Performance	16
F. Restrictions on Alienation	16
G. Numbers of Applications	17
III. The Commission Should Broaden the Elimination of Secondary Use of Private Carrier Paging Channels	18
IV. Conclusion	19

SUMMARY

PacTel Paging ("PacTel") supports, with minor modifications, the Commission's proposals in PR Docket No. 92-235 to refarm the private land mobile bands below 512 MHz.

PacTel strongly supports the proposal to allocate channels recovered in the below-512 MHz bands to Innovative Shared Use Operations and to foster regional systems. However, PacTel proposes that the Commission adopt a five-region plan rather than a seven-region plan based on the RBOC regions. PacTel also favors an allocation and licensing plan that would enable a licensee to aggregate channels on contiguous frequencies, thereby providing more flexible and efficient spectrum use.

Finally, PacTel suggests modifications in the construction and bond requirements, and other anti-speculation measures, to fully achieve the Commission's stated objectives.

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Arizona, Georgia, Texas and Florida. PacTel serves in excess of 100,000 paging units over its various PCP systems. PacTel also was a Specialized Mobile Services ("SMR") licensee prior to the expiration of its waiver to hold SMR licenses and is interested in providing SMR service again in the future assuming that pending changes in its ownership structure take affect.^{2/} Based upon this operating history, PacTel has substantial experience to draw upon in commenting on the Notice.

**I. PacTel Supports Granting Recovered Channels
for Innovative New Services**

2. The Commission has proposed allocating those channels in the 150-162 MHz band that are to be recovered by reducing the channel spacing to what the Commission terms Innovative Shared Use Operations.^{3/} PacTel supports the

^{2/} PacTel -- successor in interest to Communications Industries ("CI") -- is an affiliate of a wireline company -- Pacific Bell. As such, the current prohibition against wireline companies holding SMR licenses would apply to it. See, Section 90.603(c). When CI was acquired by Pacific Telesis Group, the company was granted a waiver of the prohibition for the SMR licenses then held by CI. Subsequently, the Commission terminated all such waivers. See Amendment of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band, 7 FCC Rcd 4398, 4399 (1992). As the Commission is aware, Telesis is in the midst of a reorganization which will, upon completion, eliminate any affiliation between the wireless operations of PacTel and the wireline operations of Pacific Bell. Accordingly, PacTel will, after such divestiture, be able to hold SMR and other Part 90 licenses which have a wireline prohibition.

^{3/} Notice at 8117.

Commission's proposal to license these recovered channels for new innovative services, with some modifications.

A. PacTel Favors Regional Licenses

3. The Commission has concluded that the public interest will best be served by granting the recovered channels through a licensing plan that fosters the implementation of regional systems.^{4/} PacTel strongly supports this proposal. Every mobile communications business in which PacTel participates is exhibiting an ever-increasing public demand for wider-area coverage. Mobile telephone systems (SMR and traditional), paging systems (private and common carrier), and cellular telephone systems are all undergoing rapid geographic expansions in order to meet customer requirements.^{5/} The problem, of course, is that the transaction costs associated with the aggregation of adjoining systems licensed in small discrete territories can be substantial, if not prohibitive.^{6/} The better approach -- and the one actually proposed by the Commission -- is to adopt a

^{4/} Notice at 8120.

^{5/} Indeed, the Commission has recognized this fact in its Notice of Proposed Rule Making for private carrier paging channel exclusivity. Amendment to the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 2227 (1993) at para. 18 ("PCP NPRM").

^{6/} The Commission recognized this fact in its Notice of Proposed Rule Making on Personal Communications Services. Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 5676 (1992) at paras. 56-58 ("PCS NPRM").

licensing plan that properly recognizes the existing needs for regional services, and permits systems to be authorized and implemented on this basis.

B. PacTel Favors Exclusive Frequency Grants

4. The Commission proposes two alternatives: (1) that 2 channels be licensed exclusively to five licensees in a region, with the remainder of the channels to be shared, and (2) that 50 channels be licensed exclusively to each of five licensees.^{7/} PacTel supports the second alternative based upon its operating experience.^{8/} The first alternative could lead to the endless squabbling that currently characterizes the shared channels used by the private land mobile industry. The Commission has been required to participate in a seemingly endless number of disputes regarding sharing of channels by highly competitive operators.^{9/} Furthermore, as the Commission has observed, sharing "threatens to discourage optimally efficient use."^{10/} Since the purpose of the Notice was to increase spectrum efficiency, the Commission should adopt the second alternative, which will lead to innovation and spectral efficiencies.

^{7/} Notice at 8120-21.

^{8/} PacTel was party to several "forced sharing" agreements governing 12-channel trunked systems in the 470-512 MHz band as allocated in Docket No. 18262.

^{9/} See, e.g., PCP NPRM.

^{10/} PCP NPRM at ¶15.

C. Regions Should Reflect Mobile Service Areas

5. The Commission proposes that licenses be granted by regions which correspond to the seven Regional Bell Operating Company ("RBOC") regions. PacTel supports the use of large regions, but using RBOC regions does not appear appropriate. The seven RBOC regions evolved quite some time ago based upon the needs of the wireline telephone business and the corporate structure of AT&T. The historical factors which led to the formation of these regions appear to have no direct bearing upon the mobile services industry.^{11/}

6. Instead of the seven-region proposal, PacTel recommends that the Commission subdivide the country into five geographic regions as set forth in Attachment A hereto. The proposed five-region plan corresponds to a consensus licensing plan advocated by the major narrowband participants in the PCS NPRM. The five-region plan was arrived at by taking into consideration the manner in which wide-area wireless systems have evolved in the marketplace over time. Based upon this derivation, PacTel believes that this regional plan provides a logical basis for licensing these new systems.^{12/}

^{11/} Indeed, the regions were based more upon AT&T's needs at divestiture and corporate structures of AT&T than upon any grand scheme.

^{12/} In fact, the map also represents the basic regions by which one of the major nationwide paging companies, BellSouth, offers regional service. PacTel understands that BellSouth arrived at this geographic breakdown after analysis of the
(continued...)

D. New Channels Should be Granted on Contiguous Frequencies

7. The Commission has proposed a licensing plan that would cause new channels to be non-contiguous and interspersed among existing licensees.^{13/} PacTel is concerned that this proposal may limit the flexible use of new efficient technologies because it would prevent a licensee from aggregating all of its spectrum into one or more contiguous blocks of spectrum with usable bandwidths in excess of 5 or 6.25 KHz.^{14/} PacTel understands that some of the newer technologies which may offer substantial increases in spectral efficiency, such as TDMA and CDMA, may require contiguous blocks of spectrum 50 to 100 KHz in width.^{15/}

8. PacTel proposes that the Commission adopt a different method of allocating this recovered spectrum. PacTel proposes that on January 1, 1996, all existing licensees be

^{12/} (...continued)
market for wireless services, travel patterns, and airline hubs.

^{13/} Notice at 8117-18.

^{14/} Notice at 8119.

^{15/} For instance, Mobile Technologies Corp. ("MTel") filed a proposal for Narrowband Wireless Services which require 50 KHz of spectrum. See Mobile Telecommunications Technologies Request for Pioneer's Preference, filed Nov. 12, 1991. PacTel itself has experimented with 50 KHz bandwidths and has proposed new modulation techniques, such as Orthogonal Frequency Division Multiplexing, which could offer substantial improvements in spectrum efficiencies. See Comments of PacTel Paging in Gen. Docket No. 90-314; ET Docket No. 92-100, filed Nov. 9, 1992.

relocated to the lower channels on the band.^{16/} At that time, the newly cleared spectrum would be available for new applicants for Innovative Shared Use Operations.^{17/} This would permit each new licensee to receive contiguous frequency assignments. The Commission should further permit all licensees to aggregate their spectrum, if adjacent, into one or more channels.^{18/}

E. PacTel Supports Open Entry

9. The Commission proposes to limit speculative behavior by limiting access to these new channels to existing licensees.^{19/} PacTel strongly opposes a licensing process that favors "entrenched" carriers in this fashion and thereby stifles further competition by restricting the eligibility of new market entrants. PacTel believes open entry and open competition will lead to the greatest public interest.^{20/} This approach also goes

^{16/} PacTel believes that the expense of moving the mobile radios and system infrastructure should be slight given that a substantial number of these units are diode or otherwise programmed. The net cost to licensees would be *de minimis*.

^{17/} Any licensees which fail to meet the secondary date set forth in proposed Section 88.433 would still lose one of their two licenses and that channel could be allocated to other applicants.

^{18/} PacTel understands that the current prohibition against aggregating 5 KHz channels in the 220-222 MHz band has led to a complete absence of equipment.

^{19/} Notice at 8121.

^{20/} This is particularly true when historical eligibility criteria have limited the participation of an entire class of service providers (i.e., wirelines).

against the philosophy explicit in all recent allocation decisions. Repeatedly, the Commission has emphasized the benefits of broad eligibility criteria and open entry in fostering the development of diverse competitive communications services.^{21/}

10. The Commission has completely failed to provide any real justification for altering the open entry approach in the context of this proceeding other than to suggest that it would prohibit speculation. Although PacTel supports the Commission's goals, it strongly disagrees that eligibility restrictions would promote this goal. First, the Commission can adopt the proposed one-day filing window for submitting applications.^{22/} Second, to promote spectrum efficiency, the Commission can require that a licensee be required to use all of its channels prior to the end of the first ten-year license term.^{23/} As a general matter, the more extensive the construction requirements, the less likely speculators will be to

^{21/} See, e.g., Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, FCC 93-34, released February 12, 1993 ("900 SMR NPRM"); Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 5676 (1992).

^{22/} See Notice at 8122.

^{23/} See Notice at 8121.

participate.^{24/} Third, the Commission's past history of licensing has shown that open entry ensures the maximum amount of innovation.

11. PacTel understands and concurs with the desire of the Commission to adopt a licensing scheme that will serve to get the licenses into the hands of serious participants with a *bona fide* interest in developing this service. Rather than seeking to accomplish this objective by adopting restrictive eligibility criteria which serve to discourage new entrants, the Commission would be better served by adopting strict licensing criteria to weed out insincere applicants.^{25/} PacTel's ideas along these lines are set forth in more detail below.^{26/}

F. Additional Spectrum Efficiency
Requirements Are not Necessary

12. In the Notice, the Commission proposes that Innovative Shared Use licensees be required to meet additional spectrum efficiency requirements in the second term of the license.^{27/} PacTel agrees that licensees should be required to

^{24/} For instance, the Commission agreed with NABER in the PCP NPRM that an extensive build requirement would limit the opportunity for warehousing and speculation. PCP NPRM at ¶18.

^{25/} PacTel favors eligibility requirements that deter speculators, but not serious operators. For instance, PacTel supports financial qualification requirements, forfeiture bond requirements, and the like.

^{26/} See Section II, infra.

^{27/} Notice at 8121. See also proposed Section 88.1015.

continue to increase the efficiency of their systems, but PacTel believes that licensees will naturally have that desire if the spectrum is granted on an exclusive basis.^{28/} It is extremely difficult for the Commission to mandate effective standards for efficiency. If the standards are too restrictive, licensees may fail to meet them, and if too lax, they may not represent much of a requirement. Therefore, it makes more sense to allocate spectrum exclusively so that the market will force licensees to become more efficient.^{29/}

II. PacTel Supports Additional Anti-Speculation Devices

13. The Commission has a variety of tools at its disposal to create a licensing scheme that will discourage speculation in channels that become available for Innovative Shared Use Operations. It is obvious from reading the Notice that the Commission is seeking comments on a combination of requirements in an effort to create high enough barriers to entry

^{28/} The Commission obviously agrees. The Notice explains that exclusive licensees "would have more flexibility and a greater incentive to use their spectrum efficiently." Notice at 8121.

^{29/} Indeed, the cellular industry, for example, is now going through an extensive refarming effort in order to meet market demand. Paging operators are continually increasing the spectrum efficiency so as to lower the price of their service and compete more effectively. For example, the radio common carrier paging industry, which enjoys exclusive assignments, has increased the baud rate of its systems (its measure of efficiency) over 500% since 1982. Clearly, the market is an effective mechanism to achieve spectrum efficiency goals.

to assure that only financially secure and qualified applicants receive licenses in this service. PacTel generally supports and offers the following proposals.

A. Construction Requirements

14. The Commission proposes that a licensee must construct 25 base stations within five years of initial license grant and at least 4 base stations in each MSA in the region by

regional presence on a single channel.^{32/} Notably, PCP systems can operate with up to 1000 watts ERP, which means that their coverage areas far exceed those of Innovative Shared Use stations with lower power limits. If anything, the standard for establishing a regional mobile system should be greater in terms of the number of sites that should be constructed, not less than the PCP service. PacTel is very concerned that these threshold criteria are too low to represent a meaningful regional presence which would justify exclusivity for an Innovative Shared Use licensee.^{33/} PacTel suggests that the Commission require that regional licensees be required to construct a system that covers 80% of the population in each MSA in the region within five years.

16. The Commission proposes that a licensee that fails to construct its system or to meet efficiency goals shall be unable to transfer its license or to add additional transmitters.^{34/} The proposal does not go far enough. A licensee that fails to construct its system within the construction period should be completely divested of its license in the event that it does not meet its construction

^{32/} PCP NPRM at ¶24.

^{33/} This is especially true if the Commission adopts broad eligibility standards as PacTel suggests.

^{34/} Section 88.1013.

obligations.^{35/} This would incent licensees to meet their construction and efficiency obligations. As a subsidiary benefit, it would also deter speculators. This proposal will only be effective, however, if the Commission does not undermine it by granting waivers of this rule; thus, PacTel suggests that the Commission grant waivers only for extraordinary circumstances completely beyond the control of the licensee.^{36/}

B. Financial Showings

17. The Commission proposes that applications for Innovative Shared Use licenses must include proof that the applicant has "sufficient financial resources to construct and operate the proposed system during the first license term."^{37/} Applicants would be required to make a financial showing of net current assets or a firm financial commitment sufficient to meet these costs.^{38/}

^{35/} The Commission has proposed this solution in other proceedings where exclusivity was being granted. See, e.g., PCP NPRM at ¶30. This rule would act as the proverbial "death penalty" for licensees who fail to meet their construction deadlines.

^{36/} The Commission currently uses a similar standard for failures to construct Part 22 authorizations. See Section 22.43(b)(1) ("Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond his control. No extensions will be granted for delays caused by lack of financing, lack of site availability....")

^{37/} Section 88.1011(3).

^{38/} Section 88.1011(c) & (d).

18. PacTel supports the adoption of rigid financial showing requirements in connection with applications for Innovative Shared Use Operations. PacTel believes that firm financial commitments in the cellular licensing arena have deterred some speculation. The financial threshold set by the Commission, however, is too low to act as a meaningful deterrent. This problem could be solved by increasing the construction requirements, as proposed above, which would have the incidental benefit of raising the financial requirement floor and further deterring speculative applicants.

C. Technical Showings

19. The Commission proposes that each applicant submit a construction plan with its initial application.^{39/} The proposed rules, however, do not explain what is required in the construction schedule. PacTel suggests that the initial application should in fact contain detailed technical parameter showings and identify specific station sites. Furthermore, applicants should be required to certify that they have secured reasonable assurance of the availability of the proposed sites. These suggestions are based upon PacTel's view that the ~~elimination of detailed technical showings in other licensing~~

of application mills to mass produce and mass market application packages.^{40/} PacTel recommends that each applicant submit sufficient technical information with respect to enough specific transmitter locations to meet the minimum construction requirements at the first licensing benchmark.

D. Filing Fees

20. Although the Notice states that the application fee would be based on the number of channels and the minimum number of base stations, no detail was given.^{41/} PacTel applauds the Commission's effort to adopt an initial filing fee that is high enough to assure that applicants are serious in their expressed interest in securing an Innovative Shared Use Operations license. PacTel recommends that the Commission seek the statutory authority to amend its fee structure in order to permit it to charge for Innovative Shared Use systems on a per-transmitter basis, as it does in the public land mobile services. The Commission would appear to be on solid ground requesting this authority since it intends to keep track of the number of transmitters that are licensed, and there is, therefore,

^{40/} If the Commission adopts "postcard" type applications, it can well expect to be inundated with applications from speculators. Detailed engineering plans will eliminate most of the speculative filings. When coupled with the other antispeculation devices being proposed, the Commission should expect few speculators.

^{41/} Notice at 8121.

increased processing required with respect to every transmitter at a particular station site.

E. Bonds to Insure Performance

21. The Commission has not proposed that Innovative Shared Use applicants obtain a forfeiture bond as a prerequisite to receiving a license. Forfeiture bonds can act as a real deterrent to speculators. As the current lottery system is structured, a speculator has no downside risk to filing. If a purchaser does not materialize for its spectrum, a speculator can return the spectrum to the Commission with no penalty. Forfeiture bonds create such a downside risk for speculators. PacTel supports the use of forfeiture bonds as a method of assuring the sincerity of an applicant.^{42/}

F. Restrictions on Alienation

22. The Commission proposes to prevent Innovative Shared Use operators from assigning their licenses if they fail to meet any of the construction or spectrum efficiency deadlines.^{43/} PacTel disagrees, however, with the general prohibition on selling entire licenses if the deadlines are not met. While the Commission has strived to create a licensing scheme that will assure that licenses get into the hands of only

^{42/} The Commission took such an approach in the 900 SMR NPRM, at ¶40.

^{43/} Section 88.1013(d)(2).

qualified applicants, no licensing scheme is perfect. Nor can any licensing scheme assure that every qualified applicant receives a license in the initial licensing round. Under these circumstances, absolute restrictions on the transfer of stations prior to the completion of the first benchmark of construction would place an undue encumbrance on the operation of market forces.^{44/} Instead, the Commission should require transfer applicants to make an affirmative showing indicating that any transfer prior to construction completion is based upon changed circumstances, and further demonstrating that they did not secure

~~the license for speculative purposes~~

with greater interests to improve their chances in the lottery selection process by filing more applications. This unlimited application approach would generate increased fees for the Commission, and also would avoid the litigation engendered in the cellular licensing arena by filing schemes and strawmen applications intended to skew the lottery process and avoid the one-application-to-a-market rule.

III. The Commission Should Broaden the Elimination of Secondary Use of Private Carrier Paging Channels

24. In Section 88.1063, the Commission proposes to eliminate secondary use of Non-Commercial paging channels by SMR and other private radio services, but fails to do so for Commercial paging channels. Such an exclusion should apply to all 900 MHz PCP channels. The presumed rationale for extending the exclusion to Non-Commercial paging channels is that the sharing of channels between paging and mobile service is not efficient. PacTel agrees. This same rationale, however, applies equally to Commercial channels, which traditionally have been more loaded than their Non-Commercial counterparts. Commercial paging is one of the most efficient uses of the spectrum and its sharing with other services could eliminate capacity and throughput of systems.

IV. Conclusion

25. The foregoing premises having been duly considered, PacTel respectfully requests that the Commission expeditiously adopt final rules reflecting PacTel's comments.

Respectfully submitted,

PacTel Paging

By: Carl W. Northrop /EAT

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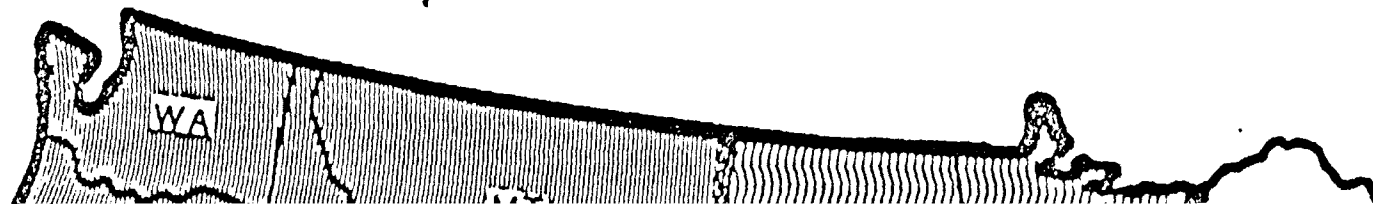
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May 28, 1993

ATTACHMENT A

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CERTIFICATE OF SERVICE

I, Tana Christine Maples, a secretary in the law firm of Bryan Cave, hereby certify that on this 28th day of May, 1993, I caused copies of the foregoing **COMMENTS OF PACTEL PAGING** to be sent by hand delivery via courier to the following:

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